

Holland Law Offices

Wills, Trusts, Estates, Probate,
Asset Protection & LGBT Planning

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LGBT / Same Sex Planning:

Until same sex marriages are recognized under all 50 states and under federal law in the same manner as heterosexual marriages, same sex couples need to be particularly aware of estate planning issues. Without a proper estate plan, in most cases same sex couples will be treated in the eyes of the law as complete and utter strangers. As a result, same sex couples without the proper estate planning documents in place will suffer unnecessary heart ache, endless frustration and possible financial ruin during an already difficult time.

Effective estate planning for gay or lesbian couples requires a “non-standard approach”. Without the benefits of the unlimited marital deduction and other advantages that traditional married couples enjoy, same sex couples need to aggressively seek out alternate solutions to maximize their assets and reduce their taxes. Estate tax laws for same sex partners are unfavorable and the stakes are high. Keep in mind, Federal Estate Tax rates can be as high as 35%. To avoid Connecticut Estate Taxes, parties to a Civil Union under Public Act 2009-13 must follow specific rules and filing requirements.

Another concern for same-sex couples is avoiding probate court on death. Everything in a Will becomes public during probate. Prior to admitting a Will to probate, all potential heirs must be notified and are given the opportunity to contest the Will. For that reason, many same sex couples opt for a Revocable Living Trust to dispose of their assets at death. Revocable Living Trusts can be 100 percent private and they are much more difficult for surviving heirs to contest.

Finally same sex couples must concern themselves with issues related to guardianship of minors and funeral arrangements. If there are children, chances are, at least at this point in time, the children will have only one of the partners as a legal parent. Unless proper documentation has been prepared in advance, a Probate Court Judge will have decision making authority over some of these sensitive issues. It is particularly important for

same sex couples to address these issues.

Conclusion. Because the law regarding same sex couples is subject to change, it is important to put everything in writing in order to help protect your rights. Otherwise, the laws could change and you may be stuck with the state's designation with regard to your care and the disposition of your assets in the event of death or disability.

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